

Rules and Regulations

THE BOARD OF COUNTY COMMISSIONERS

Natrona County, Wyoming

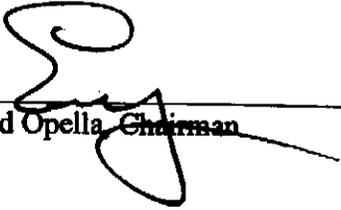
I certify that the attached is a true and correct copy of the new rules governing the practice and procedure of contested cases before the Board of County Commissioners adopted in accordance with the Wyoming Administrative Procedures Act, Wyo. Stat. Ann. §16-3-101 et seq. W.S. 1977.

Prior to adoption, these rules were made available for public inspection on February 29, 2012. The rules were adopted April 17, 2012 following a public hearing.

All previously filed rules are hereby superseded. The attached rules are effective immediately upon filing with the County Clerk.

Signed this 17 th day of April, 2012.

THE BOARD OF COUNTY COMMISSIONERS
NATRONA COUNTY, WYOMING


Ed Opella, Chairman



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NATRONA COUNTY COMMISSIONERS

**RULES FOR CONTESTED CASE
PRACTICE AND PROCEDURE
BEFORE THE
BOARD OF COUNTY COMMISSIONERS OF
NATRONA COUNTY, WYOMING**

**Adopted April 17, 2012
Pursuant to the Wyoming Administrative Procedures
Act**

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CHAPTER 1
GENERAL PROVISIONS AND DEFINITIONS

SECTION 1: AUTHORITY. These rules are promulgated pursuant to the Wyoming Administrative Procedures Act and by authority of Wyo. Stat. Ann. § 16-3-102, as amended. Whether or not herein set forth, the provisions of the Wyoming Administrative Procedures Act, Wyo. Stat. Ann. § 16-3-101 through 16-3-115, as amended, shall, in addition to these rules, govern all hearings and adjudications under these rules of practice, except that where a conflict shall arise between the statutes and these rules, the statute shall govern and control.

SECTION 2: PURPOSE. These rules are intended to set forth clear and comprehensive procedures for the conduct of contested cases pursuant to the Wyoming Administrative Procedures Act Wyo. State. Ann. §§ 16-3-101 through 115 (West 2007).

SECTION 3: CITATION. Citation to these rules shall be "Rules for Contested Case Practice and Procedure Before the Natrona County Board of County Commissioners."

SECTION 4: APPLICABILITY. These rules shall apply to the conduct of contested cases before the Natrona County Board of County Commissioners; and any joint powers board or other governmental entity associated with Natrona County that adopts these rules as their own in compliance with the Wyoming Administrative Procedures Act.

SECTION 5: CONSTRUCTION. These rules are to be liberally construed to assure the unbiased, fair, expeditious and impartial conduct of contested case proceedings before the Board of County Commissioners. In the absence of a rule, the presiding officer may proceed in any manner consistent with the intent of these rules.

SECTION 6: GENERAL COURSE AT CONTESTED CASE PROCEEDINGS. Unless otherwise provided by law, proceedings before the Board of County Commissioners are governed by the contested case provisions of the Wyoming Administrative Procedures Act and, to the extent their application is not inconsistent with a particular case or proceeding, the Wyoming Rules of Civil Procedure may be utilized to provide guidance.

SECTION 7: DEFINITIONS. As used in these rules:

- a. "Board" means the Natrona County Board of County Commissioners.
- b. "Chairman" means the Chairman of the Natrona County Board of County Commissioners
- c. "Clerk" means the Natrona County Clerk.
- d. "Commission" means the Natrona County Board of County Commissioners.
- e. "Commissioner" means a member of the Natrona County Board of County Commissioners.

f. **“Contested Case”** means a proceeding in which legal rights, duties or privileges of a party or parties are required by law to be determined by the Board after an opportunity for hearing.

g. **“Hearing”** includes contested cases and those instances where by policy or resolution, appeal to the Board is provided.

h. **“Party”** means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

i. **“Person”** means an individual, partnership, corporation, association, municipality, governmental subdivision, or public or private organization or any character other than an agency.

j. **“Petitioner”** means the initiating or petitioning party .

k. **“Presiding Officer”** An attorney designated by the Board to preside over the contested case in accordance with Chapter 2, Section 7 of these rules.

l. **“Registrar of Rules”** means the County Clerk of Natrona County.

m. **“Respondent”** means the responding party.

SECTION 8: SEVERABILITY. If any portion of these rules is found to be invalid or unenforceable, the remainder shall remain in effect.

SECTION 9: PREVIOUS RULES SUPERSEDED. From and after the effective date of these rules, any and all previous filed Rules for Contested Case Practice and Procedure before the Natrona County Board of County Commissioners shall be superseded and shall be of no further effect.

SECTION 10: EFFECTIVE DATE. These rules shall become effective upon filing with the office of the County Clerk.

CHAPTER 2
CONTESTED CASE PROCEEDINGS

SECTION 1: FILING AND SERVICE OF PAPERS.

- a. In all contested cases, the parties shall file all original documents, pleadings and motions with the County Clerk, with true and complete copies of the particular document, pleading or motion, properly served on all parties. If a presiding officer is appointed by the Board, true and complete copies of the particular document, pleading or motion, shall be served upon the presiding officer.
- b. If a party is represented, service of contested case documents, pleadings and motions shall be made upon the party's attorney.
- c. Any such person desiring to institute a hearing, must file a petition, in writing, with the County Clerk, setting forth the name and address of the parties; and a statement in ordinary and concise language, of the facts upon which the petition is based, including, whenever applicable, particular reference to the statute, regulation, rule, or order upon which the petition is based, and any instruments, documents at issue and involved in the allegations set forth. The Petition shall be served on all parties by personal service according to the Wyoming Rules of Civil Procedure, Rule 4, or by certified mail, return receipt requested. Proof of service must be filed with the County Clerk.
- d. Filing, after the initial service of the Petition, may be made either by hand delivery, by mail transmittal to the last known address provided to the County Clerk, or by electronic transmission. An original copy shall be filed with the County Clerk within three (3) days of sending an electronic transmission to the County Clerk. An original copy shall be sent to all parties within three (3) days of sending an electronic transmission to a party.
- e. The Respondent shall be allowed twenty (20) days from the date of service to file with the County Clerk an answer or other pleading.
- f. When the Answer contains new matters, the Petitioner shall have fifteen (15) days from the date of receiving the Answer to file a reply to such new matter or otherwise plead.
- g. In the event of the failure of the Respondent to answer or otherwise plead within the twenty (20) day time period, and provided the forgoing rules as to service have been complied with, the Respondent shall be considered in default of and the allegations of the petitions of the contest taken as true, and the contest will be brought before the Board for consideration and appropriate action.

h. Any case may be finally disposed of by stipulation, agreed settlement, consent order, or default of the parties, approved by the Board. An appropriate order accordingly shall be entered in the case record.

SECTION 2: DOCKETING. The Clerk shall assign a docket number for each contested case, establish a separate file for each docketed case, and enter the proceedings, with the date of its filing on a separate page of a docket provided for such purposes. All papers, opinions, documents, transcripts, and evidence pertaining thereto, and all such items filed thereafter shall be signed and contain:

- a. Conspicuous reference to the assigned docket number;
- b. A caption setting forth the title of the contested case proceeding and a brief designation describing the document filed; and
- c. The name, address, and telephone number of the person who prepared the document.

SECTION 3: SCHEDULING. Upon docketing, the board shall take appropriate action towards an ultimate decision, which may include, but not be limited to scheduling conferences, pretrial hearings, motion hearings, settlement conferences, and the Contested Case Evidentiary Hearing. At a time prior to the Contested Case Evidentiary Hearing, the Board or presiding officer may direct the parties to appear and consider the simplification of the issues, the necessity or desirability of amending the pleadings, the possibility of obtaining admissions of facts and of documents, and such other matters as may aid in the disposition of the case. Such conference shall be conducted informally.

SECTION 4: NOTICE OF HEARING. The County Clerk shall cause written notice of any hearing held under these rules to be served upon each party, personally or by certified mail, as much time in advance of the date set for the hearing as is reasonably practicable, or in any specific time limit required by statute. Such notice shall include a statement of:

- a. The time, place and nature of the hearing.
- b. The docket number assigned to the case.
- c. The legal authority and jurisdiction under which the hearing is to be held.
- d. The particular sections of the statutes, rules, resolutions, policies or court decisions involved.
- e. A short plain statement of the matters asserted. If the Clerk is unable to state the matters in detail, the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application, a more definite and detailed statement shall be furnished by the petitioner.

SECTION 5: CONTINUANCES AND EXTENSIONS OF TIME.

a. A request for a continuance of any scheduled hearing shall be in writing, shall state the reasons therefore and shall be filed and served on all parties. Continuances shall be sparingly granted, only upon a substantial showing of good cause, or when necessary to assure fairness and otherwise avoid manifest injustice. Continuances will not ordinarily be granted ex parte. Opposing counsel or the opposing party if not represented, shall be contacted before a request for continuance is submitted to the Board.

b. A request for an extension of time shall be filed and served on all parties prior to the expiration of the applicable time period. An extension of time will be granted only upon a showing of good cause, or when necessary to avoid manifest injustice.

c. The presiding officer or Board may relax the requirement for granting continuances and extensions of time, so long as no party objects.

SECTION 6: COMPUTATION OF TIME. The computation of any period of time prescribed or allowed by these rules or any applicable statutes shall be in accordance with the provisions of Rule 6(a) and (d) of the Wyoming Rules of Civil Procedure.

SECTION 7: DESIGNATION AND AUTHORITY OF PRESIDING OFFICER.

a. A presiding officer may be designated by the Board to preside over the contested case and will provide the Board with findings of fact and conclusions of law. In resolving the contested case, the presiding officer shall have that authority provided by law, included but not limited to regulating the course of the contested case proceeding. The Board may request that the appointed presiding officer provide a recommended decision. The Board has three options for conducting the contested case proceeding: 1) hear the case with the chair of the Board conducting the hearing, 2) the Board may appoint a presiding officer to conduct the hearing with the Board present to hear the evidence, or 3) the Board may appoint a presiding officer to conduct the hearing independently of the Board's presence and the Board makes the final decision based upon the findings of fact, conclusions of law, transcripts, and exhibits of the hearing; and a recommended decision if the Board so directs.

b. The presiding officer may, at any time a contested case is pending, recuse himself from presiding over the contested case by filing written notice of recusal with the Clerk and serving all parties. From and after the date the written notice of recusal is entered, the presiding officer shall not participate in the resolution of the contested case.

c. Upon motion of any party, recusal of the presiding officer shall be for cause, as provided in Rule 40.1(b)(2) Wyoming Rules of Civil Procedure.

d. The appointed presiding officer shall be an attorney in good standing with the Wyoming State Bar.

SECTION 8: EX PARTE COMMUNICATION. A party or that party's attorney shall not communicate, directly or indirectly, in connection with any issue of fact or law with the presiding officer or Board concerning any pending case, except upon notice and opportunity for all parties to participate; should ex parte communication occur, the presiding officer or Board shall advise all parties of the communication as soon as possible thereafter, and if requested, allow any party an opportunity to respond.

SECTION 9: DISCOVERY. Unless otherwise prohibited by law, discovery shall be available to all parties in accordance with the provisions of Rule 26, 28, through Rule 37 (excepting Rule 37(b)(1) and 37(b)(2)(D) therefrom) of the Wyoming Rules of Civil Procedure. Discovery requests, answers, and deposition notices are not to be sent to the presiding officer or the Board.

SECTION 10: SUBPOENAS. Any party may request the presiding officer or Board to issue a subpoena so as to compel the attendance of a witness or for the production of documents. Request for issuance of a subpoena shall be accompanied by a complete subpoena. Upon receipt of a subpoena request, the presiding officer or Board shall issue the subpoena and return the subpoena to the requesting party for the purpose of service.

SECTION 11: EXPEDITED CONTESTED CASE.

a. Upon request of the parties, made prior to the date set for an evidentiary hearing, any case may be heard as an expedited case.

b. Expedited cases will be decided upon by written argument, evidence and stipulations submitted by the parties. Oral arguments may be permitted upon the request of any party.

c. The presiding officer or Board, at their discretion, may require an evidentiary hearing in any case in which it appears that facts material to a decision in that case cannot be properly determined without an evidentiary hearing.

SECTION 12: ATTORNEYS. The filing of a pleading by an attorney constitutes his or her appearance for the party for whom the pleading is filed. The Board or presiding officer must approve any withdrawal of counsel. Any person appearing before the Board or presiding officer in a representative capacity, shall be precluded from examining or cross-examining any witness, unless such person shall be an attorney licensed to practice law in the state of Wyoming, or a non-resident attorney associated with a Wyoming attorney. This rule shall not be construed to prohibit any person from representing him or herself in any hearing before the County.

CHAPTER 3
EVIDENTIARY HEARING AND DECISION

SECTION 1: EVIDENCE.

- a. Generally, the taking of evidence at the Evidentiary Contested Case Hearing shall be governed by Wyo. Stat. Ann. § 16-3-108 and any case law there under.
- b. Evidence may be received in written form, yet if such written evidence would not be admissible under the Wyoming Rules of Evidence, all parties should be afforded a reasonable opportunity to confront and cross-examine the author of the written evidence. Generally, such a reasonable opportunity is afforded by giving all parties a written notice of the intent to introduce and rely upon written evidence and the notice given a reasonable period of time prior to the scheduled evidentiary hearing.
- c. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
- d. Effect shall be given to the rules of privilege as recognized by Wyoming law.
- e. Administrative notice may be taken of judicially cognizable facts, provided the parties are properly notified of any material facts noticed.
- f. Unless otherwise provided by law, the party generally with the burden of proof will be the first to present evidence, all other parties being allowed to cross-examine in an orderly fashion. When that party rests, other parties will then be allowed to present their evidence, again allowing for orderly cross-examination. Rebuttal evidence will be allowed only at the discretion of the presiding officer.

SECTION 2: RECORD OF PROCEEDINGS.

- a. The record must include:
 - (1) All formal and informal notices, pleadings, motions, and intermediate rulings.
 - (2) Evidence received or considered including matters officially noticed.
 - (3) Questions and offers of proof, objections and rulings thereon.
 - (4) Any proposed findings and exceptions thereto.
 - (5) Any findings of fact, conclusions of law, recommended decisions, reports, opinions, or orders by the presiding officer or Board.

b. The Evidentiary hearing proceeding, including all testimony, shall be reported verbatim stenographically. All other preliminary hearings may be tape recorded at a party's request. Oral proceedings or any part thereof shall be transcribed on request of any party upon payment of the cost thereof.

SECTION 3: BRIEFS. If a party desires to submit a written brief, a request shall be made to the presiding officer or Board. If approved, a date shall be set by which such brief is due. Briefs should set forth the factual and legal position of the party and be filed and served on all parties.

SECTION 4: TELEPHONE CONFERENCES.

a. At the discretion of the presiding officer or Board, telephone conference calls may be used to conduct any hearing or other proceeding. At the discretion of the presiding officer or Board, parties or their witnesses may be allowed to participate in hearings by telephone, videoconference, or other electronic means, so long as each participant in the hearing has an opportunity to participate in, hear, and, except when a telephone is used, see the entire proceeding. All substantive and procedural rights apply to telephone hearings, subject only to the limitations of the physical arrangement.

b. Documentary evidence must be mailed by the proponents to all parties and the presiding officer or Board at least five (5) days before the hearing.

c. A failure to appear and grounds for default may be concluded if any of the following conditions exist for more than fifteen (15) minutes after the scheduled time for hearing: a failure to free the telephone for a hearing, or a failure to be ready to proceed with the hearing as scheduled.

SECTION 5: ORDER OF PROCEDURE. The following order of procedure shall be followed:

a. The presiding officer or Board chair, if a presiding officer has not been appointed, shall announce that the hearing is open and call by docket number and title of the case to be heard. The presiding officer or Board chair shall ask if the parties are ready to proceed and will allow parties an opportunity to deal with any preliminary matters.

b. The presiding officer or Board chair shall administer the oath to all witnesses who will present testimony. All persons testifying shall stand and be administered the following oath: "Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth in this hearing?"

c. The opening statement will be made by the Petitioner first, then by the Respondent.

d. Evidence will be presented by the Petitioner first, then by the Respondent. Petitioner may then offer rebuttal evidence. Parties may exercise the right to cross-examine. Petitioner offered

exhibits will be marked by the letters of the alphabet. Respondent offered exhibits will be marked by numbers.

e. The presiding officer or the Board may examine witnesses at the close of either parties' direct or cross examination.

f. No testimony shall be received by the presiding officer or Board unless given under oath/affirmation administered by the presiding officer or Board chair.

g. Closing statements shall be made by the Petitioner first, then by the Respondent.

h. The presiding officer or the Board may limit the time for opening and closing statements.

i. The presiding officer or Board may recess the proceeding as appropriate.

j. After all parties have had an opportunity to be heard, the presiding officer or Board may excuse all witnesses and adjourn the hearing and reconvene to deliberate at a later time or the Board may choose to close the evidentiary portion of the hearing and deliberate immediately.

k. The hearing may be reconvened only upon a motion by a party to the proceeding and only upon a showing of good cause.

SECTION 6: RECOMMENDED DECISION. In those instances where the Board has requested a recommended decision from an appointed hearing officer, the presiding officer shall file the recommended decision with the County Clerk and serve copies of the recommended decision on the Board and on all the parties.

SECTION 7: FINAL DECISION.

a. Any final decision entered shall be in writing, filed with the County Clerk and served upon all parties.

b. The final decision shall include findings of fact and conclusions of law on material issues. Final decisions may be in either order or decision letter form. When the Board requests that counsel draft a proposed final order, counsel may forward the original to the Board, concurrently serving copies of the proposed order on all parties, along with a notice that any objections to the form of the proposed order must be made within ten (10) days.

c. Within ten (10) days of the date of the final decision, any party may file a motion for reconsideration or rehearing for any of the reasons identified in Rule 59(a) of the Wyoming Rules of Civil Procedure. The Board shall issue a written order in response to the motion.

d. Clerical mistakes in final decisions or other parts of the record may be corrected by the Board at any time, of its own initiative, or on the motion of any party and upon notice to all parties. During the pendency of judicial review, such mistakes may be corrected only with leave of the court having jurisdiction.

CHAPTER 4
JUDICIAL REVIEW

SECTION 1: JUDICIAL REVIEW. Unless otherwise provided by law, any party aggrieved or adversely affected by a final decision in a contested case is entitled to judicial review in the appropriate district court pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure.